**WAGE AND HOUR LAW**

**Gimme a break: meal period requirements for Tennessee employers**

by Brad Harvey

Tennessee is one of a select number of states that have legislated whether employers must provide meal breaks for their employees and how long the breaks must last. Meanwhile, federal law doesn’t directly require meal breaks but does regulate when breaks should be considered paid time for hourly employees. You should familiarize yourself with both sets of laws to avoid the risk of “having your lunch eaten.”

**Tennessee law**

Under Tennessee law, private employers with at least five employees must provide each employee scheduled to work six or more consecutive hours with a 30-minute unpaid rest break or meal period. The break may not be scheduled until after the first hour of scheduled work. A limited exception applies for workplaces “that by their nature of business provide for ample opportunity to rest or take an appropriate break.”

The Tennessee Attorney General’s Office has interpreted the 30-minute break requirement literally and has rejected suggestions that a 15-minute break or even two 20-minute breaks generally meet the requirement. That being said, the attorney general has recognized that the availability of shorter breaks “may be a factor to consider in determining whether the [workplace] environment provides ample opportunity to rest or take an appropriate break so as to fall within the exception to the requirement” of providing a 30-minute break.

Whether the exception applies is “to be decided on a case-by-case basis.” Other factors include “the degree of freedom accorded to employees, whether the employees are free to leave the employer’s premises, whether there is a locker room or lounge maintained for the employee’s comfort on the premises, whether the employees are required to be engaged in the performance of any substantial duties for the employer during this time period and whether the time in question is spent predominantly for the employer’s benefit.”

Notably, the TDLWD “has made a regulatory determination that waiters and waitresses, by the nature of the business where they work, have sufficient flexibility to take breaks so as to fall within the exception.” Based on the statutory language, though, employers should remain cautious about using the exception for any employees if the realities of the workday don’t allow ample opportunity to rest. As an additional exception, the TDLWD has indicated that if it “determines that the public health, safety or welfare may be adversely affected in workplace environments by adhering to rest breaks or meal periods, said breaks should not be required, such as surgical nurses on duty in an operating room.”

**Federal law**

As we mentioned, Tennessee law requires meal periods for most employees but doesn’t require employers to pay them for their breaks. Federal law, in contrast, doesn’t require meal or rest breaks but does speak to when you must pay nonexempt employees for breaks. In other words, federal law answers the question, *When is there no free lunch?*

First, federal regulations under the Fair Labor Standards Act (FLSA) indicate that bona fide meal periods ordinarily last at least 30 minutes and need not be paid:

(a) **Bona fide meal periods.** Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to be at his machine is working while eating.

In contrast, rest periods lasting up to 20 minutes typically should be paid, according to the regulations:

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

Read together, the regulations leave a gray area with respect to breaks lasting between 20 and 30 minutes. U.S. Department of Labor (DOL) guidance and relevant case law suggest that the length of the break isn’t the only key variable. Other factors include the purpose of the break and the practical circumstances of the employee’s situation. In fact, it’s possible (though not common) for a break lasting less than 20 minutes to be an unpaid bona fide meal period. At the same time, it’s possible for a
break lasting more than 20 minutes but not taken for the purpose of a meal to be compensable.

The DOL Field Operations Handbook lists factors that may establish “special circumstances” so that a break lasting less than 30 minutes may be a “bona fide meal period”:

- Work-related interruptions to the meal period are sporadic and minimal.
- Employees have sufficient time to eat a regular meal. Periods less than 20 minutes should be given special scrutiny to ensure that the time is sufficient to eat a regular meal under the circumstances presented.
- The period involved is not just a short break for snacks and/or coffee but rather is a break to eat a full meal.
- There is an agreement [e.g., a collective bargaining agreement] between the employees and employer that the period of less than 30 minutes is sufficient to eat a regular meal.
- Applicable State or local laws do not require lunch periods in excess of the period indicated.

DOL wage and hour opinion letters provide additional guidance. A September 25, 2000, opinion letter indicated that under special conditions, even a 15-minute break may be an unpaid bona fide meal period:

You also state that employees have sufficient time for a bona fide meal period and have readily accessible lunch room facilities in all areas of the plant. Our follow-up conversation with _____ confirmed that all employees either bring their lunch or purchase it from vending machines located in lunch rooms. The building has numerous lunch rooms, so no employee is more than about a minute’s walk from a place to eat. In addition, there are no eating establishments nearby, and _____ estimated it would generally take more than half an hour for employees to drive to a restaurant to eat. The employees have requested the shortened lunch break because it both serves as an adequate meal period and allows them to end the day earlier. The __ granted a waiver under State law allowing this shortened meal period.

Citing 29 C.F.R. § 785.19, the DOL stated that “[w]here the employer and employees agree that a shorter bona fide meal period is sufficient and the facts of the particular situation demonstrate its sufficiency, as is the case here, it is our opinion that the period agreed upon of fifteen minutes is adequate.”

**Case law**

Now let’s turn our discussion to case law within the Sixth Circuit. In a 1971 case, *Blain v. General Electric*, employees “urge[d] that the regularly scheduled 18[-]-minute meal period cannot qualify as a bona fide meal period and is no more than a compensable rest break.” The court, however, ruled that “while the duration of the meal period is a factor to be considered, it is not solely determinative of the question.” The court further ruled that “the 30[-]-minute meal period referred to in Section 785.19 is only a broad guide to the Administrator’s enforcement policy . . . . The essential consideration in any case is whether the employees are in fact completely relieved from work for the purpose of eating a regularly scheduled meal.”

Relying on the facts before it, the court observed that “[i]mmediately preceding the meal period is a wash-up period at least 5 minutes long which [employees] use both for washing and for eating. [The employees], who are highly skilled and work with minimal supervision, are not ordered on the job the very moment the meal period ends. The weight of credible evidence is that [they] have enough time to eat.” The court also noted that the union had rejected an opportunity to return to a 30-minute meal period, providing “further evidence of the adequacy of the meal period in this case.” Finally, the court ruled that the employees “gained from the shorter meal period by spending less time in the plant.”

In a 1994 decision, *Myracle v. General Electric Co.*, the Sixth Circuit cited the *Blain* case in affirming a verdict in favor of the employer in a dispute over whether 20-minute meal periods qualified as bona fide noncompensable meal periods under the FLSA. As the district court had explained:

There is no proof before this court that the twenty-minute meal period is insufficient . . . . Little attention was devoted to the actual length of the meal period, other than the testimony offered on the distance from the plant floor to the cafeteria and the time involved in walking from one place to the other. This proof is not enough to establish that the meal period is of insufficient length. Further, the meal period’s length has remained unchanged for over thirty years. No grievance has challenged the meal period’s length since it was instituted, nor has an employee asked for overtime pay for the meal period.

**Bottom line**

While it’s possible to avoid the state requirement of providing 30-minute breaks as well as the federal guideline that breaks of 20 minutes or less be paid, Tennessee
employers should proceed with caution. Don’t let your eyes get bigger than your stomach, or you may wind up being stuck with the bill.

In most cases, you must provide employees with a 30-minute unpaid break. In most cases, breaks lasting up to 20 minutes must be paid under federal law. Furthermore, work interruptions can make even breaks lasting 30 minutes or more compensable. You should consult with counsel first if you believe you fall under an exception to the requirements.

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